Remarks

All of original claims 1-32 were rejected in view of Vega et al. (WO 2000/74755). Each of the two original claims is being amended at the end to overcome this reference. A third independent claim is being added (along with a set of dependent claims), this claim having been drafted with a limitation at the end also intended to make the claim patentably distinct from the reference.

In the ResMed invention, during a first session the severity of sleep disordered breathing (SDB) events is determined. Preferably, the treatment pressure is not changed during this session. The pressure is changed only in the next session. What is learned during each session affects the pressure used in the next session.

The question is what is a session? In paragraph 0032 of printed Application 2008/0053440, applicants say that preferably a session is a single night. This is made clear elsewhere as well, for example, in paragraph 0043 which says that pressure changes "are on a night-by-night basis rather than a breath-by-breath basis." This should be contrasted with a conventional approach in which the pressure is changed continuously as SDB events are detected.

Turning to the reference, a number of events are counted during a time (t), and the number is used to change the pressure. [Apparently, it is not a moving count, where the count at any time is determined during the most recent t minutes where there is a sliding window of time. Instead, a count is made during a window of t minutes, and the pressure is changed based on the count. Then another count is taken during the next t minutes, etc.]

The time t in the reference is said to be between 10 seconds and one hour, preferably between one minute and 30 minutes, and still more preferably between 3 and 10 minutes. The best time t is said to be 6 minutes. [It appears that when the machine

is first turned on, the first time interval t is 2 hours. But during this interval the pressure is held low so the patient can fall asleep, so this is not the usual operation.

The lengths of the repetitive sessions in the reference are at most one hour -- far less than a night's sleep as in the usual practice of the subject invention. Each of independent claims 1 and 16 is being amended to recite "each of said first and second sessions occurring during a different night." This does not happen in the reference system. And new independent claim 33 recites that "said first and second sessions [are] separate in that said blower is turned off between the sessions." This also does not appear to happen in the reference; at least nothing is said about it.

Also, many of the claims make it clear that the pressure applied during a session is constant (based on the index determined during the preceding session). For example, here are claims 7 and 11:

> 7. The method of claim 2 wherein if said AHI is greater than a minimum number, then said treatment pressure is increased in a subsequent session.
>
> 11. The method of claim 1 wherein if said SDI is less than a minimum number, then said treatment pressure is lowered in a subsequent session.

According to these (and others of the) claims, the treatment pressure is increased in a particular session only if it was determined to be necessary during the preceding session. In the reference, there is no such thing. Pressure increases occur during a session depending on what happened earlier during the same session.

In rejecting the claims, the Examiner cited the reference but the citations do not suggest the concept of events of one nightly session affecting only a subsequent nightly

session. For example, the Examiner cited page 6, lines 1-2 of the reference translation as teaching controlling "an increase in treatment pressure during a second, subsequent session if it was determined that an increase is required" (Emphasis added). However, there is no suggestion of this in the reference. In general, the Examiner is reading into the reference much more than is actually disclosed.

The other references cited by the Examiner have been examined, but they are not believed to be relevant to the invention as claimed.

For all of the aforesaid reasons, the further examination of the application and its passage to issue are respectfully requested.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.

Attorneys for Applicant
270 Madison Avenue
New York, New York 10016
Phone: (212) 684-3900
Fax: (212) 684-3999

Michael I. Rackman
Reg. No. 20,639

Date: March 25, 2010